

- (2) What is the nature and extent of claimant's injury and/or disability?
- (3) Is a permanent functional impairment required before a claimant becomes entitled to a work disability?
- (4) Is the testimony of Donald V. Belsito, M.D., admissible when dealing with issues not specifically addressed in his May 24, 2000, report?
- (5) Is Exhibit 7 from the Deposition of Dr. Belsito admissible?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file herein, the Appeals Board finds as follows:

The Award sets out findings of fact and conclusions of law in some detail which are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. The Appeals Board adopts, as its own, the findings and conclusions of the Administrative Law Judge as if specifically set forth herein.

The Administrative Law Judge found claimant suffered accidental injury arising out of and in the course of his employment on the date alleged. That finding is supported by the record. Respondent's objection to that finding was weak at best. There is no evidence to contradict the claimant's testimony about how he scratched his shin. Additionally, all of the medical providers in the record, including Daniel D. Zimmerman, M.D., Keck R. Hartman, M.D., and Donald V. Belsito, M.D., agree that the scratch suffered by claimant on his shin resulted in the pyoderma gangrenosum and the lesions which formed on claimant's leg and abdomen. Medical treatment, for that injury, at St. Francis Hospital was ordered paid by the Administrative Law Judge as authorized medical treatment. The Appeals Board concurs with that finding.

The testimony of Dr. Belsito, objected to by claimant's attorney, deals with Dr. Belsito's opinion regarding what, if any, functional impairment claimant may have pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, and whether claimant should have any permanent work restrictions as a result of the August 2, 1997, accident. Respondent's contention that claimant suffered no permanent impairment and required no restrictions as a result of this accident should come as no surprise to claimant's attorney. Those issues were covered during Dr. Zimmerman's May 9, 2000, deposition and Dr. Hartman's deposition taken May 21, 2000. Both depositions included discussion regarding claimant's functional impairment and what, if

any, restrictions claimant had as a result of the accident. Dr. Belsito's opinion in that regard was considered by the Board in reaching its opinion.

The Appeals Board finds that Exhibit 7 from Dr. Belsito's deposition should be excluded from the record. The exhibit, which is titled "Diagnostic Criteria and Prognosis in Polycythemia Vera and Essential Thrombocythemia", was printed in January 1999 in Seminars in Hematology. Dr. Belsito acknowledged he was not a hematologist and, while he had heard of that particular publication, did not regularly read it. He was, therefore, unable to lay a proper foundation for its admissibility into the record. The timely objections by respondent were proper, and the document was not considered by the Board for the purposes of this award.

The Administrative Law Judge denied claimant any permanency in his award. Both Dr. Hartman and Dr. Belsito testified that claimant had no permanent impairment resulting from the August 2, 1997, accident. The underlying pyoderma gangrenosum, which resulted in claimant's hospitalization, was a preexisting condition claimant had for some time. Dr. Hartman testified claimant had experienced the skin lesions before, and claimant even showed some of his coworkers and supervisors the lesions and pus pockets on his abdomen two to three weeks prior to the date of accident. Neither Dr. Hartman, who is board certified in infectious diseases and was the treating physician at St. Francis Hospital when claimant was admitted, nor Dr. Belsito, who is the Director of Dermatology at the University of Kansas Medical Center and board certified in internal medicine and dermatology, found any permanency as a result of this accident. They acknowledged that claimant's condition was temporarily aggravated, which justifies the award of the hospital costs during claimant's stay and follow-up treatment. However, only Dr. Zimmerman found claimant to have any permanency in assessing claimant a 30 percent impairment pursuant to the AMA Guides, Fourth Edition. Dr. Zimmerman agreed that the impairment rating he provided deals with the underlying pyoderma gangrenosum and not the accident of August 2, 1997. The Appeals Board, therefore, finds claimant suffered a temporary aggravation of his underlying preexisting condition. The award of medical treatment stemming from the August 2, 1997, accident is affirmed.

Claimant contends he should be awarded some functional impairment for the scars resulting from the infections and grafting. No doctor provided a functional impairment for the scars. Dr. Zimmerman, claimant's expert, acknowledged that he did not rate the scarring on claimant's leg and abdomen.

In workers compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1997 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g). In this instance, claimant has failed in his burden of proving what, if any, permanent impairment resulted from the scarring.

In reviewing the evidence, the Appeals Board finds that the Administrative Law Judge's Award denying claimant any permanent impairment, but awarding claimant the costs of his medical treatment as set out in Exhibit 1 of the Regular Hearing and subject to Kansas fee schedule, is proper and should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the August 29, 2000, Award of Administrative Law Judge Bryce D. Benedict should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS
D. Steven Marsh, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director